HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO. 2995 OF 2007

BETWEEN:

The Joint Director of Pension Payment,
Pension Payment Office, M.J. Road,
Hyderabad

.....Petitioner

And

M.Mahender,
Joint Assistant,
O/o Assistant Pension Payment Office,
Panjagutta, Hyderabad

.....Respondent

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:: O R D E R ::

Counsel for the petitioner : Government Pleader for Services -I

23rd April 2007

Per G.S. SINGHVI, CJ

Feeling aggrieved by order dated 03.11.2006 passed by the

Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal') in O.A.No.3542 of 2006 with M.A.No.2692 of 2006, the petitioner has filed this petition under Article 226 of the Constitution of India.

The respondent is working as Junior Accountant in the department of Pension, Government of Andhra Pradesh. In February 2004, an enquiry was initiated against him under the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 on the charge that he was a party to the fraudulent withdrawal of pension by Mohd. Ibrahim Khaleel and Mohd. Ashfaq, who are said to have produced fake documents in 1999 for availing pensionary benefits payable to 30 retired employees.

After two years of receipt of charge sheet, the respondent filed an application under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act') for quashing the proceedings of enquiry. The same was registered as O.A.No.3542 of 2006. He pleaded that the incident in relation to which the charge sheet was issued in February 2004 relates to 1999 and in the absence of any cogent explanation, the enquiry is liable to be quashed only on the ground of delay. He further pleaded that even after issue of charge sheet, no effective step was taken for conduct of enquiry and the same was being used for denying him promotion to the next higher post.

During the pendency of the original application, the respondent filed miscellaneous petition (M.A.No.2692 of 2006) for issue of a direction to the non-applicant (the petitioner herein) to consider his case for promotion to the post of Senior Assistant.

In the counter filed by him, the petitioner took up the stand that the applicant was a party to the fraudulent withdrawal of pension by Mohd. Ibrahim Khaleel and Mohd. Ashfaq against whom F.I.R.No.653 of 2001 dated 10.12.2001 was got registered at Police Station Banjara Hills under Sections 419, 420, 468 and 471 read with Section 34 of the Indian Penal Code and mere delay in the initiation of enquiry is not

sufficient for quashing the proceedings. According to the petitioner, the applicant is not entitled to be promoted to the next higher post because the charge levelled against him is extremely serious.

By the impugned order, the Tribunal rejected the respondent's prayer for quashing the charge sheet but directed the petitioner to consider the case of the applicant for promotion to the next higher post without reference to the charge sheet.

Learned Government Pleader argued that the ratio of the Supreme Court's judgment in **State of Punjab v. Chaman Lal Goyal**[1] is not applicable to the respondent's case because the charge levelled against him is extremely grave. He further argued that the Tribunal committed serious illegality by directing consideration of the respondent's case for promotion de hors the charge sheet. He submitted that an employee like the respondent, who is facing serious charge of conniving with outsiders in defrauding the public exchequer is not entitled to be promoted to the next higher post.

We have given serious thought to the arguments of the learned Government Pleader, but have not felt impressed. The facts of **Chaman Lal Goyal's case** (supra) shows that while he was posted as Superintendent of Jails at Nabha, an enquiry was instituted against the respondent on the charge that he was lax in the discharge of duties and, on that account, the terrorists attempted their escape from high security prison at Nabha. The respondent challenged the charge sheet on the ground of delay of 5 ½ years. He also pleaded that the pendency of enquiry was being used for denying him consideration for promotion to the next higher post. The High Court of Punjab & Haryana quashed the memo of charges only on the ground of delayed initiation of enquiry and also directed that the petitioner be considered for promotion to the next higher post. The Supreme Court reversed the order of the High Court and held that delay was, by itself, not sufficient for quashing the charge sheet. The Supreme Court then referred to the factors favourable and unfavourable to the respondent and observed:

> " Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the rules and practice normally followed in such cases may be different. The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped."

The facts of the present case show that the incident in relation to which the enquiry has been initiated against the respondent took place in 1999. The criminal case was registered against Mohd. Ibrahim Khaleel and Mohd. Ashfaq on 10.02.2001 and the charge memo was issued to the petitioner on 19.02.2004. The petitioner has tried to explain the delay in initiation of enquiry by asserting that the preliminary investigation of the criminal case took substantial time. The post charge sheet delay is sought to be explained on the premise that about 49 gazetted and non-gazetted employees are involved in defrauding the government and some of them have not even filed their reply.

Since the Tribunal has declined to quash the proceedings of enquiry and that part of the order is not under challenge, we do not consider it proper to make any comment on that issue. However, we are convinced that the innocuous direction given by the Tribunal for consideration of the respondent's case for promotion without reference to the charge sheet does not suffer from any jurisdictional infirmity or error apparent. Rather, the same is in consonance with the law laid down in **Chaman Lal Goyal's case** (supra) and also the judgment of the Supreme Court in **Union of India v. K.V. Jankiraman**[2], wherein it has been categorically held that mere pendency of enquiry cannot justify denial of consideration for promotion. Therefore, we do not see any reason to upset the order under challenge.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P.No.3842 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

23.04.2007
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[1] (1995) 2 SCC 570.

[2] AIR 1991 Supreme Court 2010